IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6428 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHAVESH DHIRAJLAL PANDYA

Versus

STATE OF GUJARAT

Appearance:

MR SHAKEEL A QURESHI for Petitioner

MR UDAY R.BHATT AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 22/08/2000

ORAL JUDGEMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dt. 13th February, 2000 passed by the Police Commissioner, Rajkot City, Rajkot, in exercise of his powers under Sec.3(2) of the Gujarat Prevention of

Antisocial Activities Act, 1985 (the same will be referred to hereinafter as the PASA Act), which is annexed at Annexure "A" to the petition, on the ground that the petitioner is a "dangerous person" within the meaning of Sec.2(C) of the PASA Act and that his activities are prejudicial to the maintenance of public order.

2. Looking to the grounds of detention dt. 13th February, 2000, the respondent no.2 has mentioned about seven criminal cases lodged against the petitioner detenu in different Police Stations of City of Rajkot. The detaining authority has also taken into consideration two statements of witnesses whose names and addresses have not been disclosed by claiming privilege under Sec.9(2) of the Pasa Act. That statements of two witnesses were recorded on 10th February, 2000. As per papers supplied by Mr. Qureshi, the learned advocate for the petitioner detenu, the statements were verified by the respondent no.2 on 12th February, 2000. It is the case of the petitioner that on the next day i.e. on 13rd February, 2000, the detention order came to be passed by the detaining authority. Shri Qureshi has argued that looking to the case papers of relevant seven criminal cases, it was not possible for the detaining authority to apply his mind for acquiring subjective satisfaction to pass the order of detention. Looking to the facts and circumstances of this case, though two statements were recorded on 10th February, 2000, that two statements were verified by the detaining authority on 12th February, 2000 and the detention order was passed on 13th February, 2000. Mr. Qureshi has placed reliance on the decision rendered in case of KALIDAS CHANDUBHAI KAHAR VS. STATE OF GUJARAT & ORS. reported in 1993(2) GLR 1659. In that case also, statements of such two witnesses were recorded on 16th October, 1992 and the Sponsoring authority made a proposal on 16th October, 1992 and the order of detention was passed on 17th October, 1992. This court held in that case that when the statements of witnesses are to relied on, they must be genuine statements and they must be real persons and the detenu would like to verify as to whether these persons are fictitious persons or not. Whether the statements are bogus statements or not. Unless the detenu knows the addresses and names of the persons who have given the statements, he cannot verify the genuineness and correctness of the aforesaid facts. Along with the grounds of detention, if the full contents of the statements are supplied to the detenu, he can have full opportunity to verify the same for making an effective representation in the case. This court held that when that is so, the detaining authority is expected

to do some exercise before actually exercising privilege under Sec.9(2) of the PASA Act and in that case, it has further been held that the detaining authority had not exercised his power under Sec.9(2) of the PASA Act and therefore, the order of detention was held to be bad and illegal on that only ground. The present case squarely falls within the facts and circumstances of the above cited case.

4. It may be noted that none of the respondents has filed any affidavit-in-reply, to controvert the case pleaded by the petitioner detenu in the petition which is supported by his affidavit. Under the circumstances, the order of detention is held to be bad and illegal and it requires to be quashed and set aside.

5. For the foregoing reasons and discussions made hereinabove, this petition deserves to be allowed and accordingly it is allowed. The order of detention dt. 13th February, 2000 passed by the respondent no.2 with regard to the present petitioner detenu is hereby quashed and set aside and the detenu is ordered to be released forth with, if not required in any other criminal case. Rule is made absolute accordingly. Direct service is permitted.

Date: 22/8/2000. (H.H.MEHTA,J.)
ccshah